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August 20, 1987

Mr. Gerald Brock
Chief, Common Carrier Bureau
Federal Communications Commission
Suite 500
1919 M Street, N.W.
Washington, D.C. 20554

Re: Part 68 Equipment Registration Program

Dear Mr. Brock:

On behalf of our client, the Independent Data Communications Manufacturers Association, Inc. ("IDCMA"), we are writing in response to a pleading filed on July 23, 1987, by the Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company and Pacific Northwest Bell Telephone Company ("U S West"). The pleading is couched as a response to a petition for rulemaking filed by American Telephone and Telegraph Company ("AT&T"), but U S West has taken the occasion to launch an irrelevant and uninformed attack on the Commission's Part 68 equipment registration program.

AT&T's petition for rulemaking (RM-5945) seeks Part 68 amendments to remedy certain billing problems that evidently arise when private branch exchanges fail to return "answer supervision" on Direct Inward-Dial trunks. Some parties have supported AT&T's petition, while others have opposed it. IDCMA takes no position on AT&T's proposal or on those responses which were germane to AT&T's petition.

What has stimulated this letter is the "conclusion" (pages 11-12) of U S West's July 23 comments on AT&T's petition. There, U S West misrepresents the history of Part 68 and challenges the foundation upon which the program is predicated.

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U S West claims that Part 68 was adopted because "the former Bell System had not developed reasonable interface specifications and there were no industry standards organizations which were equipped to develop such standards." U S West at 11. Such a statement is patently absurd.

The reason Part 68 was adopted was that carriers -- including those now owned by U S West -- were restricting CPE competition by prohibiting or imposing burdensome conditions on the connection of independently supplied CPE to the network. The purpose of Part 68 was to eliminate such impediments to competition. The mechanisms chosen to implement this purpose were (1) the prescription of technical standards that ensure that any equipment connected to the network will not cause harm and (2) the establishment of a requirement that carriers permit the connection of any CPE that is shown to comply with those standards. For several good reasons, it was determined that the same technical standards should apply both the carrier-provided and independently supplied CPE.

The problem was not that the Bell System was incapable of developing "reasonable interface standards." After all, once the Commission decided to create the registration program, AT&T did more than any other party to draft the rules that ultimately were embodied in Part 68. The problem was that the carriers, then as now, had the incentive to favor the equipment they marketed over that which was available from non-carrier sources. Had the Commission believed that the telephone companies could be relied upon to judge fairly and dispassionately the potential of a competitor's product to "harm" the telephone network, Part 68 would never have been created.

There is nothing in the Commission orders establishing the registration program which supports U S West's claim that the Part 68 program "was intended to be a transitory regulatory program only." It is true that a concurring statement issued with one of the Commission's opinions in Docket No. 19528 expressed the "hope and expectation" that the industry circumstances which created the need for the registration program would change. But subsequent history has shown that the need for Part 68 has not diminished, and that in fact the Part 68 program

has produced the single greatest triumph of the Commission's common carrier policies over the past decade: the explosion of CPE competition, with its attendant benefits of lower prices, faster innovation, better quality and service, and increased choices for the consumer. This competition will continue to benefit the American public, but only if the Commission preserves the proper regulatory safeguards.

The emergence of the T1 Committee as a forum for the discussion of industry standards does nothing to obviate the need or Part 68. The T1 Committee is administered by the Exchange Carriers Standards Association; its standards are voluntary, not mandatory; it has no power to enforce users' rights to connect independently supplied equipment to the telephone network; and its total output to date consists of a handful of standards which do not even begin to prescribe the proper technical specifications for most interconnection situations. To make matters worse, the T1 Committee appears to be lending its credibility to certain carrier efforts to modify pro-competitive policies that have been laboriously established and repeatedly reaffirmed by the Commission.

U S West's viewpoint is not representative of industry sentiments on Part 68. In 1983, the Commission initiated Gen. Docket No. 83-114, which sought to determine the continuing need for numerous technical regulations, including Part 68. Those commentors which addressed this issue were virtually unanimous in expressing support for retaining the program (the sole exception being a single two-sentence discussion by one party which clearly did not understand the issues).

IDCMA's initial pleading in Gen. Docket No. 83-114 is attached. The points made there remain relevant today. Indeed, one issue discussed in IDCMA's pleading was the question whether jacks to effectuate standard means of interconnection should be prescribed in carriers' tariffs or in the Commission's Part 68 rules. Today, more than 10 years after the registration program was established and almost four years after the Commission decided to extend the registration program to digital transmission services (thus opening up yet another new area for competition, with the usual beneficial results), many carriers

still fail to install the proper jacks at the customer end of digital transmission lines.

For example, the Commission determined that RJ48 jacks should be used to permit connection of CSUs/DSUs on 1.544 Mbps and DDS-type digital transmission facilities, but the carriers frequently fail to place such jacks on the lines (or wire them incorrectly), thus hindering the connection of independently supplied CPE. This problem is proving to be persistent, notwithstanding frequent efforts to persuade carriers to use the Commission-prescribed jack. Inclusion of these jacks in Part 68, rather than merely in carriers' tariffs, may be the only way to ensure the availability of the proper means for connecting independently supplied CPE. This most certainly is not an issue that should be entrusted to the T1 Committee, a subcommittee of which is currently voting to adopt 1.544 Mbps interface specifications which violate the Commission's CPE policies.

Part 68, it bears repeating, has been and continues to be one of the Commission's greatest achievements. U S West's gratuitous statements to the contrary are utterly without merit.

Please let us know if you have any questions.

Sincerely,

James L. Casserly

Herbert E. Marks
James L. Casserly

Enclosure

cc: Patrick J. Donovan
James R. Keegan
James M. Talens
William J. Tricarico (for inclusion in the public record -- RM-5945)
William H. Von Alven

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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| In The Matter of | ) | |
| | ) | Gen. Doc. 83-114 |
| A Re-Examination of Technical Regulations | ) | |

COMMENTS OF THE INDEPENDENT
DATA COMMUNICATIONS MANUFACTURERS ASSOCIATION, INC.

The Independent Data Communications Manufacturers Association, Inc. ("IDCMA"), by its attorneys, hereby responds to the Notice of Inquiry and Proposed Rulemaking released by the Commission on March 18, 1983.

I. INTRODUCTION AND IDENTIFICATION OF IDCMA

In this proceeding, the Commission is reviewing a wide variety of its technical regulations to determine which, if any, should be eliminated or revised.[1/] This broad inquiry will involve a review of 21 separate Parts of the Commission's rules.[2/] IDCMA will address only the continuing need for Part 68, wnich establishes the

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1/ See A Re-Examination of Technical Regulations, Gen. Docket 83-114, Notice of Inquiry and Proposed Rulemaking, at ¶1 (released Mar. 18, 1983) [hereinafter cited as "Notice"].

2/ See id.

registration program for connection of terminal equipment, or customer-premises equipment ("CPE"), to the telephone network.

IDCMA strongly supports the retention of Part 68 in its present form. As an association of manufacturers of CPE used in computer (data) communications, IDCMA's primary goal is to promote opportunities for all manufacturers, including those not affiliated with common carriers, to compete in the CPE marketplace. The Commission, which shares this goal, has done much to promote CPE competition. Perhaps the single most important element of the Commission's efforts in this regard is the Part 68 registration program.

The Part 68 program promotes competition by requiring that interconnection to telephone services and facilities be nondiscriminatory. If a given terminal device complies with Part 68, it can be registered; if registered, it can be connected to the public switched network or to designated private line services. This approach provides needed certainty to carriers, equipment manufacturers, and consumers.

Uniform, mandatory, readily referenced technical standards for interconnection have accelerated the growth of CPE competition and brought numerous benefits to residential consumers, business users, equipment manufacturers, and the American economy. Further growth in CPE competition can be

expected as new services are brought under the registration program, new products are developed, and consumers adjust to the benefits of shopping for equipment in a competitive market rather than simply accepting what tne telephone company has to offer. Retention of Part 68 is essential to continue the progress toward a competitive CPE marketplace.

II. DISCUSSION

Tne courts and the Commission have consistently favored a policy of full competition in the CPE marketplace. In 1956, the United States Court of Appeals for the District of Columbia Circuit established consumers' rights to use the network in ways which are "privately beneficial without being publicly detrimental."[3/] This principle was reaffirmed by the Commission in the Carterfone decision.[4/] Yet carrier resistance to CPE competition persisted, employing a variety of devices: imposition of requirements for "protective coupling arrangements," opposition to the Commission's registration program, creation of new requirements for

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3/ Hush-A-Phone Corp. v. United States, 238 F.2d 266, 269 (D.C. Cir. 1956), on remand, 22 FCC 112, 113-14 (1957).

4/ Carterfone, 13 FCC 2d 420, 423, recon. denied, 14 FCC 2d 571 (1968).

carrier-provided customer-premises equipment (e.g., "network channel terminating equipment"), etc.[5/]

The establishment of the registration program was the single greatest step toward the promotion of CPE competition. Compliance with the technical and other standards assures that the equipment can be connected. The general rules are clearly specified, and everyone enjoys the fruits of that certainty:

> --carriers are assured that their facilities will not be harmed by the connection of CPE;
>
> --all manufacturers are assured an opportunity to market their products; and
>
> --consumers (both residential and business) can more confidently select competitively supplied equipment.

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5/ See, e.g., AT&T v. Litton Systems, Inc., 700 F.2d 787 (2d Cir. 1983) (sustaining antitrust liability predicated on requirement for "protective coupling devices"); United States v. AT&T, 524 F. Supp. 1336 (D.D.C. 1981) (denying, in most respects, defendants' motion to dismiss antitrust suit challenging various restraints on CPE competition); North Carolina Utilities Comm'n v. FCC, 552 F.2d 1036 (4th Cir.), cert. denied, 434 U.S. 874 (1977) (rejecting carrier arguments against establishment of FCC's equipment registration program); Petitions Seeking Amendment of Part 68, CC Docket No. 81-216, Third Notice of Proposed Rulemaking, FCC 83-268, (released June 14, 1983) [hereinafter cited as "Direct Connection Order"] (rejecting carrier arguments that "network channel terminating equipment" should be treated differently from other customer-premises equipment).

The several years since the adoption of Part 68 have demonstrated the wisdom of the Commission's decision to develop the registration program. Competition in terminal equipment is increasing, and numerous benefits to the public are resulting. As the Commission stated in its Second Computer Inquiry decision,

> We have repeatedly found that competition in the equipment market has stimulated innovation on the part of both independent suppliers and telephone companies, thereby affording the public a wider range of terminal choices at lower costs. See, for example, First Report in Docket No. 20003, 61 FCC 2d at 867; Phase II Final Decision and Order in Docket No. 19129, 64 FCC 2d 1, 602. Moreover, this policy has afforded consumers more options in obtaining equipment that best suits their communication or information processing needs. Benefits of this competitive policy have been found in such areas as improved maintenance and reliability, improved installation features including ease of making changes, competitive sources of supply, the option of leasing or owning equipment, and competitive pricing and payment options.6/

To this list of public benefits the Commission might have added two others: increased employment by American CPE manufacturers and a healthy contribution to America's balance of trade.

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6/ Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 FCC 2d 384, 439 (footnote omitted), on reconsideration, 84 FCC 2d 512 (1980), on further reconsideration, 88 FCC 2d 512 (1981), aff'd sub nom. Computer & Communications Industry Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, 103 S.Ct. 2109 (1983).

The Part 68 rules thus clearly serve a worthy purpose. Nonetheless, it might be questioned whether the "burdens" of compliance outweigh the benefits, and whether the rules have outlived their usefulness.[7/] The answer to both questions is a resounding "No."

Whatever "burdens" Part 68 may create are far outweighed by its benefits. Manufacturers are not burdened by having to assure that their equipment does not harm the network; they have no right and no incentive to produce equipment that does produce harms. What is important is that the rules to protect the network are clearly understood and apply equally to all CPE suppliers, whether or not they are affiliated with communications common carriers.[8/]

As for carriers, Part 68 simply imposes the duty not to discriminate in interconnection between equipment supplied by one vendor and equipment supplied by another. Thus, the only "burden" imposed on carriers is that they may not abuse their control over essential transmission facilities to create artificial advantages for their affiliated manufacturers or preferred suppliers. On the other hand, Part 68 provides carriers with ready assurance

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7/ See Notice, at ¶¶1, 4, 12.

8/ That carrier affiliates are subject to the same interconnection rules as other CPE suppliers helps assure that carriers cooperate in the development of reasonable standards.

that the equipment connected to their facilities will not harm those facilities. The benefits of Part 68 easily outweigh its burdens.

It is equally clear that Part 68 rules have not outlived their usefulness. Indeed, the registration program is as important now as it ever was. This was demonstrated quite recently when Part 68 was used as the vehicle to obtain a ruling which opened to competition a large segment of the CPE market that had been foreclosed to independent manufacturers by AT&T's insistence that "network channel terminating equipment" should not be subject to the same rules as other CPE.[9/]

Having served to produce the long-overdue policy determination that "NCTE," like other CPE, can be provided competitively, the Part 68 framework is now being employed to develop a consensus on the technical standards for connection to the digital transmission services with which "NCTE" is used. Given the degree of interoperation between this CPE and the network facilities used to provide digital transmission services, it is essential that Part 68 embody the standards for direct connection of CPE. Were the development of such standards to be merely "left to the

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9/ See Direct Connection Order, supra note 6, at ¶44.

marketplace," digital transmission services could be unreasonably designed, or modified, so as to make obsolete the equipment produced by independent manufacturers.

The registration program is increasingly important in this time of rapid change in the telecommunications industry. Only now are many customers beginning to consider owning their own CPE. They, like carriers and manufacturers, benefit from the certainty that Part 68 provides. The need for such certainty is made more acute by the restructuring of AT&T in compliance with the Computer Rules and the Modification of Final Judgment entered in United States v. AT&T. As America adjusts to a substantially different telecommunications marketplace, everyone benefits from the presence of uniform, agreed-upon, technical standards for interconnection.

Of course, as the specific configuration of telecommunications facilities changes, and as new services are brought under the registration program, specific amendments to Part 68 may be necessary; the rules cannot be cast in concrete. But such modifications as may be needed are best considered in a narrowly focused Part 68 rulemaking proceeding, rather than in a sweeping inquiry such as this one.

One final point may be worth mentioning. Periodically, the FCC convenes informal industry meetings to discuss Part 68. At the most recent FCC/Industry meeting, held

December 7, 1982, a representative of the Commission inquired whether there remained a need for the Part 68 rules to include detailed drawings of the plugs and jacks used to effect interconnection of CPE with the telephone network.[10/] The industry response was unanimous: the plug and jack specifications should remain in Part 68.[11/]

As this episode demonstrates, Part 68 enjoys broad industry support. The rules there stated are not seen as burdensome but as establishing basic, essential ground rules that assure opportunities for everyone to compete on an equal footing. Part 68 deservedly enjoys broad support.

## III. CONCLUSION

IDCMA commends the Commission for its willingness to review its rules to determine their validity in a changing era. But as the above discussion reflects, the Part 68

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10/ See 47 C.F.R. §68.500 et seq. (Connectors) (1982).

11/ Minutes of the 21st FCC/Industry Part 68 Meeting of Dec. 7, 1982, at ¶7 (Dec. 15, 1982).

rules perform a valuable service. IDCMA therefore urges that these rules be retained.

Respectfully submitted,

INDEPENDENT DATA COMMUNICATIONS MANUFACTURERS ASSOCIATION, INC.

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August 5, 1983

## CERTIFICATE OF SERVICE

I hereby certify that copies of Reply Comments of IDCMA were mailed this 24th day of December, 1987, by first class mail, postage prepaid, to the following individuals.

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